

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

**IN THE MATTER OF:**

<b>ORVAL KENT FOOD COMPANY, INC. )</b>	<b>Complaint No. R4-2004-0022</b>
<b>5001 SOUTH SOTO STREET )</b>	<b>For</b>
<b>VERNON , CA 90058 )</b>	<b>Administrative Civil Liability</b>

**ORVAL KENT FOOD COMPANY, INC. IS HEREBY GIVEN NOTICE THAT:**

1. Orval Kent Food Company, Inc. (the Company) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under § 13385 and § 13399.33(c) of the California Water Code (CWC).
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on the Company. The Company will be notified at least ten days in advance of the date, time and place of the hearing. The Company and/or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In the event that the Company fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.
5. The Company, located at 5001 South Soto Street in Vernon, California is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No.97-03-DWQ, and NPDES No. CAS000001 (General Permit). This facility was enrolled in the General Permit on November 4, 1992. The facility WDID Number is 419I 009054, and is identified by Standard Industrial

February 17, 2004

Classification code description 2099; "Manufacturer of Fresh Salads, Entrees and Desserts." The General Permit (Section B, No. 14) requires the Company to submit a Storm Water annual report by July 1<sup>st</sup> of each year.

6. Pursuant to CWC § 13399.31, a Notice of Non-Compliance (NNC) was mailed to the Company on July 24, 2003 for failure to submit the 2002/03 annual report. A Notice of Violation (NOV) was then mailed to the Company on August 29, 2003 for failing to submit the 2002/03 annual report within 30 days of mailing of the NNC. The NOV was returned as unclaimed. An inspection of the facility was attempted on December 15, 2003, but access was denied to the inspector. An NOV was mailed on January 15, 2004, which included discussion of the Company's failure to submit the required annual report. A telephone discussion with Mr. Jim Brady and Regional Board staff on January 16, 2004 reiterated the requirement for submittal of the annual report. The Company failed to submit its annual report until February 2, 2004. The delinquent submittal of its annual report violates provisions of the General Permit, the Federal Clean Water Act and the CWC.
7. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2002/03 annual report, the Company is alleged to have violated the General Permit for 217 days (July 1, 2003 to February 2, 2004) and is civilly liable for a total of 217 days of violation at a maximum of \$10,000 for each day in which the violation occurs. The annual report was received on February 2, 2004.
9. CWC § 13399.33(c) provides that the Regional Board shall impose a minimum penalty of not less than \$1,000 on any person who fails to submit an annual report in accordance with CWC § 13399.31.
10. Pursuant to CWC § 13399.33(a)(2), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:
  - a. The nature, circumstances, extent, and gravity of the violation:  
The Company has been given sufficient notice to submit the annual report. The Company has not responded to the notice and has not submitted the annual report for 217 days; therefore, no reduction in the civil liability is warranted. Annual reports provide compliance information for permitted facilities, and are effective for Regional Board staff in determining whether an operator is in compliance with the General Permit.

- b. Violator's ability to pay:  
The Regional Board lacks sufficient information to determine the ability of the Company to pay. The Regional Board feels that the penalty is correctly assessed; therefore, no reduction in the civil liability is warranted.
  - c. Prior history of violations:  
On July 25, 2001, Regional Board staff mailed an NNC to the Company for not submitting the 2000/01 annual report. On July 19, 2002, the Regional Board mailed an NNC to the Company for not submitting 2001/02 annual report. On August 19, 2002, the Regional Board mailed an NOV for failure to submit the 2001/02 annual report. Both annual reports were submitted after these notices.
  - d. Degree of culpability:  
The Company is required under the General Permit (Section B, No. 14) to submit an annual report by July 1<sup>st</sup> every year. The Regional Board mailed the Company an NNC and included the delinquency in the NOV sent January 15, 2004.
  - e. Savings resulting from the violation:  
Regional Board staff have examined the cost savings from non-submittal of the stormwater annual report and determined that it is at least \$500.
  - f. Other matters as justice may require:  
The Regional Board attempted to perform a compliance inspection of the facility at 5001 South Soto Street on December 15, 2003. The Company, however, denied access to Tetra Tech, Inc. staff, who were under contract to the US EPA. An NOV was then mailed on January 15, 2004 for failure to allow access, failure to provide a SWPPP and MP for review, and failure to submit the delinquent annual report.
- 11. After consideration of those factors, the Executive Officer proposes civil liability be imposed on the Company in the amount of \$2,900 (of this amount, \$1,000 represents the minimum mandatory penalty of CWC § 13399.33(c) for failing to submit a stormwater annual report).
  - 12. CWC § 13399.33(d) provides that the Regional Board may recover from the Company the costs incurred by the Regional Board in this matter. The Regional Board charges a rate of \$70 per hour for staff cost recovery. As of February 17, 2004, staff spent 20 hours investigating the Company's failure to comply with the annual report requirement of the General Permit. Staff costs to date incurred by the Regional Board total \$1,400.

## PROPOSED CIVIL LIABILITY

PENALTY CATEGORY	CALCULATION	TOTAL
Non-compliance with Order No. 97-03 DWQ by failing to submit the 2002/03 annual report.	CWC § 13399.33: Minimum penalty of \$1,000 for failing to submit a stormwater annual report.	\$1,000
Recovery of Staff Costs	(20 Hours)(\$70/Hour)	\$1,400
Avoided Cost	\$500	\$ 500
<b>Recommended ACL</b>		<b>\$2,900</b>

13. The Company may waive its right to a hearing. Should the Company choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on March 22, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$2,900 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.
14. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If the Company has any questions, please contact Wendy Phillips at (213) 576-6618 or Jeff Mack at (213) 620-2121.

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Date

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Dennis A. Dickerson  
Executive Officer

## WAIVER OF HEARING

By signing below and attaching a check for the amount of civil liability proposed in the Administrative Civil Liability Complaint No. R4-2004-0022, the Company waives the right to a hearing before the Regional Board. The Company understands that it is forgoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. Furthermore, the Company understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment will be due thirty days after the date of adoption.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_  
Orval Kent Food Company, Inc.

Date: \_\_\_\_\_